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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/542,262	Applicant(s) HOLM ET AL.
	Examiner PAUL P. TRAN	Art Unit 2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 14 July 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 and 28-31 is/are pending in the application.
 4a) Of the above claim(s) 27, 32 and 33 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-26 and 28-31 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 07/14/2009.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments in the remarks filed on 07/14/2009 with respect to claims 1-26 and 28-31 have been considered, but are moot in view of the new ground(s) of rejection. Claims 27, 32-33 have been cancelled in this application, and of the above, claims 1, 20, 22, 26, 28, 29, 30 and 31 are independent claims.

The corrected pages of the specification and the replacement drawing sheet (Fig. 2), submitted on 07/14/2009, are accepted by the examiner.

Claim Objections

2. Claims 12 are objected to because of the following informalities:

2.1. Regarding Claim 12, there is a typographic error in the word "MIDI--track". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 2-19, 21 and 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3.1. Regarding claims 2-19, the terms, "An apparatus", render the claim indefinite, since the terms redefine the subject matter of the invention previously defined in claim 1. The word, "An", should be replaced with "The" for connecting the apparatus to the one defined previously in claim 1. Appropriate correction is required.

3.2. Regarding Claim 21, the terms, "A mobile telephone", render the claim indefinite, since the terms redefine the subject matter of the invention defined in claim 20. The word, "A", should be replaced with "The". Appropriate correction is required.

3.3. Regarding claims 23-25, the terms "A memory" render the claims indefinite, since the terms redefine the subject matter of the invention defined in claim 22. The word, "A", should be replaced with "The". Appropriate correction is required.

Claim Rejections - 35 USC § 101

The 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 30-31 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a useful and tangible asserted utility or a well established utility.

4.1. Regarding Claims 30-31, the claims are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a tangible asserted utility or a well established utility. A method claim per se without tangible and well established utility is a non-statutory and non-patentable subject matter.

Claims 30-31 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a tangible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) The invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-7, 10-11, 13-22, 24, 26 and 30-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Nagasawa (US Pat. 6707908, hereinafter "Nagasawa").

5.1. Regarding claims 1, 20, 22, 26, 30 and 31 discloses a mobile telephone (Nagasawa: a terminal device as illustrated in Figs. 1, 3 & 4), comprising: an audio output section configured to alert a user to an incoming call by playing a musical audible alert (Fig. 1, ref 5, 16, 17, Col. 4: 14-29, Col. 4: 30-55, the memory contains melodies or medley melody for playing incoming call announcement); a user input configured to cause an incoming call to be answered (Col. 5: 6-13, the incoming call is accepted using key input part 10); a memory embodying a data file comprising a replacement musical sequence (Fig. 1, ref 7, 12, Col. 4: 14-55, memory part 7, 12, containing built-in memory and medley melodies as shown in figure 2); and a controller, responsive to the user input, configured to control the audio output section to terminate the musical audible alert while the musical audible alert is being played by introducing and playing a replacement musical sequence (Fig. 1, ref 3, Col. 4: 14-29, the control part 3 comprising MPU or DSP for processing sound; wherein the control part can terminate the audible alert by playing the medley melodies, the plurality of pieces of music playing in sequences).

5.2. Regarding Claims 2 and 21, Nagasawa discloses the apparatus, further comprising a user input, wherein the controller, responsive to the user input, controls the audio output section to terminate the musical audible alert while it is

being played (Fig. 1, ref 3, Col. 4: 56-Col. 5: 13, control part 3 in response to the incoming call by playing the medley melody, multiple of melody pieces in sequence).

5.3. Regarding Claim 3, Nagasawa discloses the apparatus as claimed in claim 1, wherein the audio output section comprises a synthesizer (Fig. 1, ref 5, Col. 5: 6-13, the control part 3 comprising a MPU or DSP for processing the audio signal via the sound data processing part, i.e. synthesizer).

5.4. Regarding Claim 4, Nagasawa discloses the apparatus as claimed in claim 3, wherein the synthesizer processes a data stream representative of the musical audible alert in real time (Nagasawa: Figs. 1-2, Col. 4: 56-Col. 5:13, the data processing part processing melody data as audible alert in real time).

5.5. Regarding Claim 5, Nagasawa discloses the apparatus as claimed in claim 4, wherein the audio output means section is arranged to vary the data stream in real time to introduce the replacement musical sequence (Col. 7: 37-52, the sound is reproduced by playing the medley melody stream in real time).

5.6. Regarding Claim 6, Nagasawa discloses the apparatus as claimed in claim 3, wherein the synthesizer is polyphonic (Col. 8: 18-36, the audio processing part can reproducing a plurality of melody sound, i.e. polymorphic, based on the editing condition).

5.7. Regarding Claims 7 and 24, Nagasawa discloses the apparatus as claimed in claim 1, comprising a memory storing a file for producing the musical audible alert (Fig. 1, ref 7, 12, 19).

5.8. Regarding Claim 10, Nagasawa discloses the apparatus as claimed in claim 1, wherein the replacement musical sequence is of limited duration and concludes the musical audible alert (Figs. 4-5, Col. 5: 42-Col. 6: 4, the melody pieces having length in order of seconds).

5.9. Regarding Claim 11, Nagasawa discloses the apparatus as claimed in claim 1, wherein the replacement musical sequence is pre-determined (Fig. 2, Col. 4: 41-55, the medley melody are pre-programmed).

5.10. Regarding Claim 13, Nagasawa discloses the apparatus as claimed in claim 1 wherein the audio output means section is configured to terminate the musical audible alert by introducing and playing any one of a plurality of pre-determined replacement musical sequences (Fig. 2, Col. 4: 41-Col. 5: 5, the medley melody is playing when the terminal receives an incoming call).

5.11. Regarding Claim 14, Nagasawa discloses the apparatus as claimed in claim 13, wherein each individual one of the plurality of pre-determined replacement musical sequences is associated with a particular portion of the musical audible alert (Fig. 2, Col. 4: 41-55, the medley melody is formed by combining the existing melody in the memory).

5.12. Regarding Claim 15, Nagasawa discloses the apparatus as claimed in claim 1, wherein the replacement musical sequence is automatically generated (Col. 7: 37-52, the melody in the medley memory are played and reproduced as pre-programmed).

5.13. Regarding Claim 16, Nagasawa discloses the apparatus as claimed in claim 15, wherein the generated replacement musical sequence is dependent upon information characterizing the musical qualities of the musical audible alert (Fig. 7a-i, Col. 8: 46-56, the medley melody quality is dependent to the quality of the original melody in memories).

5.14. Regarding Claim 17, Nagasawa discloses the apparatus as claimed in claim 1, wherein the replacement musical sequence varies any one or more of: the arrangement of the musical audible alert; the music of the musical audible alert; the tempo of the musical audible alert; and the volume of the musical audible alert (Fig. 2, Col. 4: 41-55, the melody is varied differently by arrangement of melody combination with different pieces of music).

Regarding Claim 18, Nagasawa discloses the apparatus as claimed in claim 1, wherein the replacement musical sequence when played fades out the musical audible alert while it is being played (Figs. 5a-b, Col. 6: 16-23).

5.15. Regarding Claim 19, Nagasawa discloses the apparatus as claimed in claim 1 operable as a mobile telephone (Figs. 3-4, Col. 5: 42-51, the apparatus is a portable terminal device).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9, 23 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa (US Pat. 6707908, hereinafter "Nagasawa") in view of Hayashi (US Pub. 2001/0024965, hereinafter "Hayashi").

6.1. Regarding Claims 9 and 23, Nagasawa discloses the apparatus be able to terminate the melody ring tone with a sequence of medley melodies as claimed invention above (Figs 1-2, Col. 4: 14-55). However, Nagasawa fails to disclose the apparatus wherein the radio transceiver configured to download data representing the replacement musical sequence.

Hayashi discloses the apparatus wherein the radio transceiver configured to download data representing the replacement musical sequence (Page 2: [0035], [0040], the apparatus download from the server the melody data and stores them in the local memory 13).

As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Hayashi's melody

downloading from server to Nagasawa's mobile terminal to improve the ringing method by providing the variety of melodies (Hayashi: Page 1: [0006]-[0007]).

6.2. Regarding claims 28, 29 discloses a mobile telephone (Nagasawa: a terminal device as illustrated in Figs. 1, 3 & 4), comprising: an audio output section configured to alert a user to an incoming call by playing a musical audible alert (Fig. 1, ref 5, 16, 17, Col. 4: 14-29, Col. 4: 30-55, the memory contains melodies or medley melody for playing incoming call announcement); a user input configured to cause an incoming call to be answered (Col. 5: 6-13, the incoming call is accepted using key input part 10); a memory embodying a data file comprising a replacement musical sequence (Fig. 1, ref 7, 12, Col. 4: 14-55, memory part 7, 12, containing built-in memory and medley melodies as shown in figure 2); and a controller, responsive to the user input, configured to control the audio output section to terminate the musical audible alert while the musical audible alert is being played by introducing and playing a replacement musical sequence (Fig. 1, ref 3, Col. 4: 14-29, the control part 3 comprising MPU or DSP for processing sound; wherein the control part can terminate the audible alert by playing the medley melodies, the plurality of pieces of music playing in sequences). However, Nagasawa fails to disclose a server readably coupled to the memory and configured to respond to a request to download, to the electronic device via a communication network, a data file from the memory.

Hayashi also discloses a server readably coupled to the memory and configured to respond to a request to download, to the electronic device via a

communication network, a data file from the memory (Page 2: [0035], Page 3: [0050], melody data is downloaded from server equipment and stored into the portable terminal).

As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Hayashi's melody downloading from server to Nagasawa's mobile terminal to improve the ringing method by providing the variety of melodies (Hayashi: Page 1: [0006]-[0007]).

7. Claims 8, 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa (US Pat. 6707908, hereinafter "Nagasawa") in view of Hayashi (US Pub. 2001/0024965, hereinafter "Hayashi") and further in view of Mizuno et al. (US Pub. 2002/0046899 A1, hereinafter "Mizuno").

7.1. Regarding Claims 8 and 25, Hayashi and Yoon disclose the an electronic device as claimed invention above (Fig. 2, ref 10, Col. 2: 42-59); However, Hayashi and Yoon fail to disclose, wherein the file comprises a series of conditional branch markers, each marker indicating a time for a conditional branch to a replacement musical sequence.

Mizuno discloses an electronic device wherein the file comprises a series of conditional branch markers, each marker indicating a time for a conditional branch to a replacement musical sequence (Mizuno: Fig. 3(a-b), Page 5: [0058], an undefined program change number or code in memory (slash mark in the Fig.

3(a-b)), represents that the tone generator can replace the missing marks with basic or predetermined tones for that timbre).

As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Mizuno's MIDI file with marker to Davis' mobile terminal to improve the reprogramming of the musical alerts for the electronic devices (Mizuno: Page 1: [0002]).

7.2. Regarding Claim 12, Hayashi and Yoon disclose an electronic device as claimed invention above (Fig. 2, ref 10, Col. 2: 42-59); However, Hayashi and Yoon fail to disclose, wherein the replacement musical sequence is stored in a MIDI-track of a MIDI file.

Mizuno discloses an electronic device wherein the replacement musical sequence is stored in a MIDI-track of a MIDI file (Mizuno: Fig. 3(a-b), Page 3:[0042], the piece of music is read out from the database 330 of the server and converted to a replacement by a music selection command).

As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Mizuno's MIDI file storage to Davis' mobile terminal to improve the reprogramming of the musical alerts for the electronic devices (Mizuno: Page 1: [0002]).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Morishima (U.S. Patent 6075998) teaches a communication apparatus capable of announcing reception of a call by a melody sound composed by a user.
- Seki (U.S. Patent 7123903) teaches a wireless telephone and wireless telephone system, wherein the calling telephone can program or select a melody for its ring back tone.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL P. TRAN whose telephone number is 571-270-1944 (FAX. 571-270-2944). The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NAY MAUNG can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nay A. Maung/
Supervisory Patent Examiner, Art Unit 2618

/PAUL P TRAN/
Examiner, Art Unit 2618

November 24, 2009